85-1770

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT A. GIBSON, et al.,

Petitioners,

v.

AT&T TECHNOLOGIES, INC., a Corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether Section 301(a) of the Labor Management Relations Act bars all state law actions which tangentially involve provisions of collective bargaining agreements.

PARTIES TO PROCEEDINGS

1. Robert A. Gibson
2. Casmer Miller
3. Charles Smith
4. Joseph Stempine
5. Don C. Cannon
6. Julius W. Bellin
7. Edward F. Bleecher
8. Rose Brasco
9. Roosevelt Cain
10. Anthony A. Cyborn
11. Percy Davis
12. Richard J. Finn
13. James Harris
14. Ardell C. Kinnon
15. Jewell W. Hill
16. Luella Hilliard
17. Willis Hilliard
18. Melvin O. King
19. Raymond C. Julius
20. Willie J. Houston
21. Constantine J. Kalinejko
22. Walter Knopik
23. Eleanor B. Kornack
24. Clara Moran
25. Virt W. Neal
26. Robert Norris, Jr.
27. Frank Pierrl
28. Chester Passowic
29. Albert F. Rodig
30. Ross H. Rosebon
31. Cora Rucker
32. Leo Smiley
33. Alfred Tryba
34. Ben Wright
35. Stanley F. Nowakowski
36. Norma S. Alcoser
37. Geraldine P. Carpenter
38. Ruth H. Cyborn
39. Fannie E. Dagostino
40. Irene Glaz
41. Dolores K. Jakubczak
42. Helen P. Shiffin
43. Clara G. Zahora
44. Gordon M. Wiklund
45. AT&T Technologies, Inc.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, whose judgment is sought to be reviewed, is reported at 782 F.2d 686 (7th Circuit 1986) and is reprinted at Appendix A to the Petition.

The memorandum opinion and order of the United States District Court dated April 11, 1985, is reprinted at Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 27, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

STATUTORY PROVISION INVOLVED

The provision of the Labor Management Relations Act involved is set forth at 29 U.S.C. 185(a) which provides:

> Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between any such labor organizations may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. Section 185(a) (1982) (hereinafter referred to as Section 301(a)).

STATEMENT OF THE CASE

This cause of action was originally filed in the Circuit Court of Cook County, Illinois, on behalf of former employees of the Western Electric Company's Hawthorne Works Plant. The case was removed to the United States District Court on June 11, 1984, based on diversity and federal question jurisdiction.

The Plaintiffs in this matter were members of three local unions, all of which were part of the International Brotherhood of Electrical Workers, AFL-CIO. These local unions had entered into collective bargaining agreements with the Defendant. The supplemental income protection provisions, arbitration provisions and termination allowance provisions in each of the respective collective bargaining agreements were substantially similar.

In March of 1983, the Defendant instituted a procedure whereby the Supplemental Income Protection Program (SIPP) was offered to all eligible employees. SIPP was a supplemental income program which provided certain monetary benefits for a limited period of time. The plan was used to help alleviate a surplus condition with a minimum of involuntary attrition.

The procedure followed by the Defendant in notifying the Union in regards to the March offer of SIPP, as well as sending out the show of interest letters to the employees and ultimately allowing the employees to accept SIPP if they desired, was done precisely in accord with the terms of the collective bargaining agreement. All of the Plaintiffs in the instant case accepted the March offer of SIPP.

On June 24, 1983, the Plaintiffs were informed for the first time, through a letter signed by V. L. Schad, the General Manager of the Hawthorne Works Plant, that the Hawthorne Plant would be phased out. The Plaintiffs' complaint arises out of a claim that the Defendant, prior to the time that it instituted and promoted the SIPP plan during March of 1983, was well aware of the proposed closing of the Hawthorne Works Plant. The Plaintiffs allege that the willful failure to disclose the proposed plant closing was done with the intent of minimizing the payments which would be required to be made under the Termination Allowance provisions of the respective contracts.

In essence, the Plaintiffs contend that if they had been notified that the plant was going to close, they would not have accepted the benefits allowed under the SIPP program. Rather, they would have continued their employment (as opposed to going out on retirement under SIPP) and waited until they were declared surplus, at which time they would receive a termination allowance which would greatly surpass any amount they would receive under SIPP. This disparity is well illustrated in the case of Robert Gibson. Mr. Gibson had over 42 years of service when he participated in the SIPP program in March of 1983. The total benefits he received under SIPP amounted to $3,375.00. Had he been notified that the plant was going to close in the near future, he would have continued his employment and once declared surplus, would receive a termination allowance of $54,163.20, a difference of $50,788.20.

The Defendant filed a Motion for Summary Judgment, claiming that the instant cause of action is governed by the provisions of Section 301(a) of the Labor Management Relations Act (LMRA), 29 U.S.C. Section 185(a) (1982). The Plaintiffs argued that Section 301(a) was inapplicable to the case at bar, contending that the Complaint was not for violation of a collective bargaining agreement, but rather was for the fraudulent withholding of information.

On April 11, 1985, the Defendant's Motion was granted as to all Plaintiffs with the exception of Ruth Grimsley, a non-union Plaintiff. On January 27, 1986, the United States Court of Appeals for the Seventh Circuit affirmed the District Court's decision. This appeal follows from that order.

REASONS FOR GRANTING THE WRIT

The decisions of the Court below have exceeded the dictates of this Court regarding the pre-emptive effect of Section 301(a) of the Labor Management Relations Act. The decision of the Court below, if allowed to stand, will grant an employer license to fraudulently injure employees with impunity from state law.

THE PRE-EMPTIVE EFFECT OF SECTION 301 DOES NOT EXTEND TO STATE LAW ACTIONS WHOSE RESOLUTION ARE NOT SUBSTANTIALLY DEPENDENT UPON AN ANALYSIS OF THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT.

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. Section 185(a), reflects a Congressional intent to promote industrial peace by ensuring uniform application of federal law to the enforcement of collective bargaining agreements. *See Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448 (1957). Consequently, this Court has ruled that Section 301(a) expresses a federal policy that the substantive law to apply in Section 301 cases is "federal law, which the courts must fashion from the policy of our national labor laws." *Id.* at 456. This principle of pre-emption operates to delimit state and federal authority over labor disputes in order to avoid conflict between the exertion of judicial and administrative power. This, in turn, allows uniformity and stability in the resolution of labor conflicts. *Amalgamated Association of Motor Coach Employees v. Lockridge*, 403 U.S. 274, 276 (1971).

The question of whether a state law action is pre-empted by federal law is one of Congressional intent. Congress

did not, however, state to what extent it intended Section 301 to pre-empt state law. *Malone v. White Motor Corp.*, 435 U.S. 497 (1978).

In *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), this Court first analyzed the pre-emptive effect of Section 301. The Court concluded "that in enacting Section 301, Congress intended doctrines of federal labor law uniformly to prevail over inconsistent local rules." *Id.* at 104. The Court articulated the reason for the pre-emption doctrine, stating:

> [T]he subject matter of § 301(a) "is peculiarly one that calls for uniform law. . . . The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation . . . [and] might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes."

Id. at 103-104.

For those reasons, the Court held that an action initiated in a state Court alleging a violation of a labor contract must be brought under Section 301 and resolved by federal law.

In *Allis-Chalmers v. Lueck*, ____ U.S. ____, 105 S.Ct. 1904 (1985), the Court again examined the pre-emptive effect of Section 301. The Court noted that if the policies that animate Section 301 are to be given their proper range, the pre-emptive effect of Section 301 must extend beyond suits alleging contract violations. *Id.* at 1911. The Court noted, however,

> "[o]f course, not every dispute concerning employment, or tangentially involving a provision of a collective bargaining agreement, is pre-empted by Section 301 or other provisions of the federal labor law . . . . In extending the pre-emptive effect of Section 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to pre-empt rules that proscribe conduct, or establish rights obligations, independent of a labor contract."

Id. at 1911-1912.

The foregoing analysis lead the Court to take *Lucas Flour* one step further, holding that Section 301 pre-empts state law "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." *Id.* at 1916. The Court explicitly emphasized the narrow focus of its holding, specifically noting that its holding cannot be construed to mean that every state-law suit asserting a right that relates in some way to a provision in a collective bargaining agreement necessarily is pre-empted by Section 301. *Id.*

In the case at bar, the District Court found that "since Plaintiffs are clearly pursuing rights which arise out of the collective bargaining agreement, their action is pre-empted by Section 301. . . ." The *Lueck* decision makes it clear, however, that a state law suit which asserts a

right that relates in some way to a provision in a collective bargaining agreement is not necessarily pre-empted by Section 301. Pre-emption is mandated only where the state tort law purports to define the meaning of the contract relationship, *i.e.*, the state law claim is substantially dependent upon analysis of the terms of the labor agreement.

The instant cause of action is premised on conduct aside from the labor contract. The alleged fraud is premised upon an intentional misrepresentation. The fact that the subject of the misrepresentation relates in some way to employment does not support the conclusion that this matter arises out of a collective bargaining agreement.

Moreover, the Plaintiffs' claim in the instant case is not substantially dependent upon an analysis of the terms of the collective bargaining agreement. Resolution of this claim will involve no interpretation of any provision of the collective bargaining agreement. The procedure followed by the Defendant in notifying the Union, sending out the show of interest letters to the employees and ultimately allowing the employees to accept SIPP if they desired, was done *precisely* in accord with the contract.

Because there is nothing in the collective bargaining agreement which must be interpteted to resolve this matter, the policy reasons underlying Section 301(a) as set forth in *Lucas Flour, supra*—the possibility that individual contract terms might have different meanings under state and federal law which would inevitably exert a disruptive influence both upon negotiation and administration of collective bargaining agreements—are not threatened. Resolution of this case will depend solely on whether the Defendant knew the plant closing was imminent when it offered SIPP and it willfully withheld that information.

Thus, allowing Plaintiffs to proceed with their state-law claim creates no realistic risk of interference with the federal regulatory scheme. Consequently pre-emption is neither mandated nor proper.

CONCLUSION

The decision below has extended the pre-emptive effect of Section 301 far beyond that contemplated by this Court in *Allis-Chalmers v. Lueck, supra.* To pre-empt state law claims in matters where resolution of the same is not dependent upon analysis of the terms of the collective bargaining agreement will grant an employer license to fraudulently injure employees with impunity from the control of state tort law.

Wherefore, for the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 85-1815

ROBERT A. GIBSON, et al.,

Plaintiffs-Appellants,

v.

A T & T TECHNOLOGIES, INC., a Corporation, f/k/a WESTERN ELECTRIC COMPANY, a Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 85-1815—**Frank J. McGarr**, *Judge.*

ARGUED DECEMBER 2, 1985—DECIDED JANUARY 27, 1986

Before BAUER and POSNER, *Circuit Judges*, and GRANT, *Senior District Judge.**

BAUER, *Circuit Judge.* Plaintiffs, Robert A. Gibson, Casmir Miller, Charles Smith, Joseph Stempine, and Don C. Cannon, all former employees of the Hawthorne Works plant in Cicero, Illinois, brought suit under a state law fraud theory alleging that defendant, A T & T Technologies, Inc., improperly deprived them of the layoff allowance

* The Honorable Robert A. Grant, Senior District Judge for the Northern District of Indiana, is sitting by designation.

which was provided for in their collective bargaining agreements. The district court granted defendant's motion for summary judgment on the basis that plaintiffs' state law tort claim is preempted by Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and that since plaintiffs failed to bring this action within the six month statute of limitations period applicable to section 301(a) actions, the action is time barred. We affirm the judgment of the district court.

This action stems from the closing by defendant of its Hawthorne Works Plant. Plaintiffs are former employees of the plant who voluntarily left their positions of employment in 1983 and agreed to participate in the Supplemental Income Protection Program ("SIPP"). Essentially, the program provides an alternative to employees who might be subject to a decrease in wages, involuntary job reassignment, or layoff, to voluntarily accept SIPP benefits when an employer determines that a surplus of employees exists due to technological change or other circumstances. SIPP is provided for in the collective bargaining agreement entered into between the plaintiffs' unions and the defendant. Plaintiffs accepted SIPP benefits in the several months preceding the announcement on June 24, 1983 of the defendant's plans to close the Hawthorne Works Plant.

Plaintiffs allege that A T & T wrongfully withheld information from them about the plans to close the plant at the time it offered the SIPP benefits. They argue that because defendant withheld this information, plaintiffs were deprived of their entitlement to layoff allowances which amounted to more money than the SIPP benefits plaintiffs received. For example, plaintiff Robert Gibson accepted the defendant's offer to resign and received SIPP benefits of $3,375.00. Gibson's layoff allowance, considering his 42 years employment with A T & T, totaled $54,163.20. By accepting SIPP benefits, Gibson lost $50,788.20. Plaintiffs contend that had they known of the plans to close the plant at the time they were offered SIPP, they would have refused SIPP and continued working until the plant closed and their jobs were terminated.

On appeal, plaintiffs argue that their state law claim for willfully withholding information is not preempted by Section 301(a) of the LMRA because the state has an interest in controlling or remedying the conduct in question. Although we agree that the state has an interest in the conduct of its citizens, the state law in cases rooted in Section 301 of the LMRA has been completely preempted.

I.

Section 301(a) vests jurisdiction in the federal courts over all suits for "violation of contracts between an employer and a labor organization representing an industry affecting interstate commerce." 29 U.S.C. § 185(a). Despite plaintiffs' attempt to characterize their action under state tort law, their action actually arises from a collective bargaining agreement and thus is controlled by federal law.

In *Oglesby v. RCA Corporation*, 752 F.2d 272, 277 (7th Cir. 1985), this court held that plaintiffs' claim arose under federal law, specifically Section 301 of the LMRA, which preempts state law. There, the gravamen of each count was that plaintiff was fired without just cause. We held "that plaintiff had simply alleged a cause of action for wrongful discharge and if shown to be in violation of a collective bargaining agreement subject to Section 301, LMRA, the action arises under federal law and the fact that it was not characterized in the complaint as a federal claim is not determinative." *Id.* at 276.

Similarly, plaintiffs complain about their failure to obtain layoff benefits created by a collective bargaining agreement. Plaintiffs acknowledge that this court's decision in *Oglesby* forecloses their claim, yet they ask this court to reconsider. (Br. 12-13). The holding in *Oglesby* is dictated by settled principles which are demonstrated in the Supreme Court's recent decision in *Allis-Chalmers Corp. v. Lueck*, 105 S.Ct. 1904 (1985), which embraces the *Oglesby* rationale. In *Lueck*, an employee brought a state

tort action claiming that his employer and insurer handled his insurance claim in bad faith. In language expressly rejecting plaintiff's argument that Section 301 does not apply, the court stated:

> If the policies that animate § 301 are to be given their proper range, however, the pre-emptive effect of § 301 must extend beyond suits alleging contract violations . . . . Thus, questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of § 301 by relabeling their contract claims as claims for tortious breach of contract. 105 S.Ct. at 1911.

Earlier Supreme Court decisions interpreting Section 301 also dictate this result. *See Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962) (Section 301 preempts state law tort and contract causes of action and "calls for uniform [federal] law" to facilitate the negotiation of labor agreements and provide for resolution of disputes). *See also, Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 454 (1957) (suits for a violation of a collective bargaining agreement are governed solely by federal law).

II.

Plaintiffs' argument that the state fraud principles upon which they rely cannot be preempted because they are so "deeply rooted in local feeling" has been rejected by all the foregoing decisions. Plaintiffs rely on *San Diego Building Trades Council, Local 2020 v. Garmon*, 359 U.S. 236 (1959), to bolster their argument that state fraud principles cannot be preempted. However, the standards set out in *Garmon*, which engage in a "balancing of state and

federal interests," are irrelevant to the different question presented here.

As the Supreme Court in *Lueck* explained, the

> so-called *Garmon* pre-emption involves protecting the primary jurisdiction of the NLRB and requires a balancing of state and federal interests. The present tort suit would allow the State to provide a rule of decision where Congress has mandated the federal law should govern. In this situation the balancing of state and federal interests required by *Garmon* pre-emption is irrelevant, since Congress, has provided that federal law must prevail. 105 S.Ct. at 1912-13.

In conclusion, there is nothing in the facts of this case or federal labor law that supports reversal of the district court's judgment.

III.

The district court correctly granted defendant's motion for summary judgment because plaintiffs' state law tort claim is preempted by Section 301 of the LMRA, and plaintiffs failed to bring this action within the six month statute of limitations period. The judgment of the district court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 84 C 4891

ROBERT A. GIBSON, CASMIR MILLER, CHARLES SMITH, JOSEPH STEMPINE, DON C. CANNON, et al.,

Plaintiffs,

v.

AT&T TECHNOLOGIES, INC., a corporation, f/k/a WESTERN ELECTRIC COMPANY, a corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

This action stems from the closing by defendant AT&T Technologies, Incorporated of its Hawthorne Works plant in Cicero, Illinois. It is a proposed class action on behalf of a group of former employees of the plant alleging that the defendant improperly deprived them of the layoff allowance which was provided for in their collective bargaining agreements. Defendant has now moved for summary judgment in its favor on the basis that the plaintiffs have failed to comply with the prerequisites for filing suit under section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. For the reasons discussed herein, defendant's motion for summary judgment is granted.

The plaintiffs in this case are all former employees of the defendant's Hawthorne Works plant who voluntarily left their positions of employment in 1983 and agreed to participate in the Supplemental Income Protection Program ("SIPP"). SIPP is a supplemental income program which is provided for in the collective bargaining agreement entered into between the plaintiffs' unions and the defendant. Essentially, the program provides that when the company determines that technological change or other circumstances will create a surplus of employees in any job, occupation, or job grade which will necessitate layoffs or permanent involuntary reassignments involving a reduction in pay or a change of residence, the company will offer to qualified employees the opportunity to voluntarily leave their jobs and receive benefits under SIPP. The program is designed to allow surplus employees to be eliminated on a voluntary basis. If an employee accepts SIPP, he receives monthly SIPP benefits in addition to whatever other retirement benefits he might be entitled to. The company has complete control over when and if SIPP benefits will be offered. The plaintiffs in this case were offered and accepted SIPP benefits in the several months preceding the announcement on June 24, 1983, of the defendant's plans to close the Hawthorne Works plant.

Plaintiffs' action against defendant is based upon allegations that defendant wrongfully withheld information from them about the plans to close the plant at the time it offered the SIPP benefits. Plaintiffs contend that defendants withheld this information in order to deprive plaintiffs of their entitlement to "layoff allowances" under the collective bargaining agreement. The agreement provides that employees who are laid off by the company receive certain monetary benefits dependent upon their length of employment with the defendant. Plaintiffs contend that the amount they would have received under the layoff allowance provision of the agreement would have greatly exceeded the amount they received under SIPP. As

an example, plaintiffs point out that plaintiff Robert Gibson, who had over 42 years of service with the company, would have received a layoff allowance of $54,163.20 if he had refused SIPP and continued working until he was terminated when the plant closed. By accepting SIPP, he received only $3,375.00 in benefits. Plaintiffs contend that had they known of the plans to close the plant at the time they were offered SIPP, they would have refused SIPP and continued working until the plant closed and their jobs were terminated. Then they would have received the much greater layoff allowances. Plaintiffs contend that at the time defendant offered them SIPP benefits, it knew of its plans to close the plant but willfully failed to disclose that information to plaintiffs in order to deprive them of their right to layoff benefits. Their claim is purportedly a state tort claim for willfully withholding information.

Now before the court is defendant's motion for summary judgment. Defendant's motion is based upon the contention that plaintiffs' claim cannot be brought because plaintiffs have failed to comply with the prerequisites for bringing suit under section 301(a) of the LMRA. Section 301(a) vests jurisdiction in the federal courts over all suits for "violation of contracts between an employer and a labor organization representing an industry affecting interstate commerce." 29 U.S.C. § 185(a). Defendant contends that despite plaintiffs' attempts to characterize their action as one arising under state law, plaintiffs' action really arises under section 301(a) of the LMRA. Any state law claim that plaintiffs might otherwise have had, defendants argue, has been preempted by section 301(a). Defendants then point out that since plaintiffs' suit is one under section 301(a), it is barred because plaintiffs failed to comply with the six-month statute of limitations which applies to section 301(a) actions. Defendants also argue that plaintiffs have failed to meet several other prerequisites for bringing an action under section 301(a). Those include the failure to exhaust contractual remedies, the failure to exhaust internal union remedies, and the failure to allege

a breach by their labor union of its duty of fair representation.[1]

In response to defendant's motion, plaintiffs contend that the jurisdictional prerequisites for a section 301(a) action do not apply in this case because their action does not arise under section 301(a), but rather, is based upon state tort law. They argue that by its terms, section 301(a) applies only to claims alleging the breach of a collective bargaining agreement. They contend that they have not alleged any breach of the collective bargaining agreement, but rather, that defendant wrongfully withheld information from them when it offered them SIPP benefits. Since no breach of the collective bargaining agreement has been alleged, they argue that their state law claim has not been preempted by section 301(a).

The issue presented by defendant's motion is whether plaintiffs' purported state law claim has been preempted by section 301(a) of the LMRA. If it has been, then defendant is entitled to summary judgment because plaintiffs have clearly failed to file their action within the six-month statute of limitations which applies to actions under section 301(a). *See Del Costello v. International Brotherhood of Teamsters*, ____ U.S. ____, 103 S.Ct. 2281 (1983). Thus, if the court finds section 301 applicable to this case, then it need not address whether plaintiffs have met the other prerequisites for bringing suit under section 301.

It is now clear that all rights and claims arising from a collective bargaining agreement in an industry affecting interstate commerce arise under federal law. *See Oglesby v. RCA Corporation*, 752 F.2d 272, 277 (7th Cir. 1985)

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[1] After the defendant's motion for summary judgment had been briefed, defendant, in a letter to the court, pointed out that one of the named plaintiffs, Ruth M. Grimsly, was not a union member. Since the parties have not fully addressed the distinct issues surrounding her claim, the court will not rule on that claim at this time.

(citing *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957)). It is equally clear that state law in cases necessarily rooted in section 301 of the LMRA has been completely preempted by federal law in this area. *Id.* (citing *Avco v. Aero Lodge No. 735*, 390 U.S. 557 (1968)). The application of federal preemption in this area cannot be avoided by a plaintiff's attempts to allege only state contract or tort claims, *Moore v. General Motors Corp.*, 739 F.2d 311 (8th Cir. 1984), and the fact that a claim is not characterized as one under section 301 is not determinative of whether preemption applies. *Jones v. General Tire & Rubber Co.*, 541 F.2d 660, 664 (7th Cir. 1976). Rather, the court must look to the nature of the claim at issue to determine whether it has been preempted by section 301. *See Oglesby v. RCA Corporation*, 752 F.2d 272 (7th Cir. 1985); *Moore v. General Motors Corporation*, 739 F.2d 311 (8th Cir. 1984); *Eitmann v. New Orleans Public Service*, 730 F.2d 359 (5th Cir. 1984), *cert. denied*, 105 S.Ct. 433 (1985).

In the instant case, examination of the nature of plaintiffs' claims lead the court to the conclusion that plaintiffs clearly are asserting rights arising out of the collective bargaining agreement between their union and the defendant. Plaintiffs' suit essentially challenges the defendant's conduct in connection with its offer of SIPP benefits to plaintiffs and plaintiffs' right to SIPP benefits is governed by the collective bargaining agreement. More important, the right plaintiffs are pursuing is their right to layoff benefits; their right to layoff benefits arises solely out of the collective bargaining agreement. Thus, despite plaintiffs' contentions that they are merely seeking relief under state law, it is clear that any state law remedy that plaintiffs might otherwise have had has been preempted by section 301.

The court is unpersuaded by plaintiffs' argument that this action does not fall under section 301 because plaintiffs have not alleged any specific breach of the collective bargaining agreement. Although the language of sec-

tion 301 refers only to breaches of collective bargaining agreements, the courts have construed section 301 as applying to "all rights and claims arising from a collective bargaining agreement." *Oglesby*, 752 F.2d at 277. Thus, since plaintiffs are clearly pursuing rights which arise out of the collective bargaining agreement, their action is preempted by section 301 despite the fact that they have not alleged an express breach of one of the agreement's terms.

Nor is the court persuaded by plaintiffs' assertion that section 301(a) does not apply because plaintiffs could not have instituted a grievance procedure to seek redress of their claims since they had been taken off the company roles by the time they learned of the plant's closing. This assertion is belied by the fact that a grievance was presented by a union representative on behalf of one plaintiff, Gordon Wiklund. That grievance was nearly identical to the claims plaintiffs are asserting in this case. It alleged that the company had violated the collective bargaining agreement by offering Mr. Wiklund SIPP benefits in order to deprive him of more lucrative layoff allowance benefits. That grievance was denied and no further steps were taken either by the union or Mr. Wiklund.

Finally, the court is unpersuaded by plaintiffs' argument that their action is not preempted by section 301(a) because resort to the grievance procedure in this case would have been futile. First, plaintiffs have no way of knowing at this point what results might have been achieved through the grievance procedure because they did not pursue this avenue. Furthermore, whether or not the grievance procedure would have been futile has no significant impact upon the threshold issue in this case which is whether plaintiffs' state law claims have been preempted by section 301(a) of the LMRA. Even if the court found some basis for excusing the plaintiffs' failure to exhaust their grievance procedure, this would not alter the fact that plaintiffs failed to meet the statute of limitations requirement under section 301(a).

In sum, the court holds that plaintiffs' action does fall within the scope of section 301(a) of the LMRA. Therefore, since this action was not brought within the six-month statute of limitations period applicable to 301(a) actions, defendant's motion for summary judgment is granted. This ruling shall not apply to non-union plaintiff Ruth Grimsly.

ENTER:

/s/ FRANK J. MCGARR
UNITED STATES DISTRICT JUDGE

DATED: April 11, 1985